

SERVICE DATE – LATE RELEASE FEBRUARY 1, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 296X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
RIVERSIDE AND SAN BERNARDINO COUNTIES, CAL.

Digest:¹ This decision reopens the proceeding to modify the previously imposed Section 106 historic preservation condition. This decision also removes a condition prohibiting consummation of abandonment until the elements of an alternative service plan have been undertaken and its certification of completion have been reported to the Board.

Decided: February 1, 2013

On March 3, 2011, Union Pacific Railroad Company (UP) filed a petition seeking an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon two segments, totaling 5.0 miles, of the Riverside Industrial Lead in Riverside and San Bernardino Counties, Cal. The northern segment begins at milepost 540.15 near Colton and ends at milepost 543.88 near Riverside (North Segment), a distance of 3.73 miles, of which 2.27 miles are in San Bernardino County and 1.46 miles are in Riverside County. The southern segment begins at milepost 544.56 and extends to the end of the line at milepost 545.83 (South Segment), a distance of 1.27 miles in Riverside County (both segments are collectively referred to as the Line).² Notice of the exemption was served and published in the Federal Register on March 23, 2011 (76 Fed. Reg. 16,474).

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² According to UP, one major factor prompting abandonment of the Line is that Interstate Highway 215 (I-215) is being substantially expanded by the California Department of Transportation, in conjunction with the Riverside County Transportation Commission (RCTC) and the San Bernardino Associated Governments. UP states that, absent abandonment, the I-215 expansion would require replacing an existing railroad bridge on the North Segment of the Line at a cost of \$12.4 million to taxpayers. UP maintains that this taxpayer cost is not justified given the existing level of rail traffic and the alternative to reroute UP's overhead traffic from the North Segment.

UP did not seek to abandon the portion of the Riverside Industrial Lead between the North Segment and the South Segment (between mileposts 543.88 and 544.56, a distance of 0.68 miles) (the Remaining Segment). According to UP, there are two active shippers on the Remaining Segment, Sigma Stretch and Lehigh Cement, whose rail shipments traverse the North Segment as overhead traffic. UP proposed a plan for preserving its ability to carry out its common carrier obligation to serve shippers located on the Remaining Segment following abandonment of the North and South Segments. Specifically, UP proposed to use its existing trackage rights over the San Bernardino Subdivision of BNSF Railway Company (BNSF) from Colton south to the BNSF Highgrove switch connection with the San Jacinto Line, which is owned by the RCTC and operated for freight rail purposes by BNSF. UP would receive new overhead trackage rights over the San Jacinto line from the BNSF Highgrove switch to a point approximately 1.5 miles south, where RCTC would construct a new connection between its San Jacinto Line and UP's Remaining Segment (at UP milepost 543.88) (the Marlborough Avenue Connection). Construction of the new Marlborough Avenue Connection and the grant of trackage rights to UP over that connection and the San Jacinto Line would create a route for UP to continue to operate between its system at Colton and the Remaining Segment. UP indicated, however, that actual service to the Remaining Segment would be conducted via a haulage agreement with BNSF.

By decision served on June 21, 2011, the Board granted the requested abandonment exemption, subject to various conditions. These included, among others: (1) a "Section 106" historic preservation condition,³ and (2) a condition prohibiting UP from consummating abandonment of either the North Segment or South Segment until all trackage rights needed to permit UP to continue to serve the Remaining Segment have been approved and executed, construction of the proposed Marlborough Avenue Connection has been authorized, if necessary, and completed, and the Board has removed this condition (the "alternative service condition").

In a letter filed January 4, 2013, as supplemented by a letter filed on January 22, 2013, UP asks the Board to find that it has complied with the alternative service condition and that the Section 106 condition has been satisfied with respect to the bridge on the Line that crosses I-215 at milepost 541.5 (the I-215 bridge). On the service issue, UP certifies that all connections required for BNSF to serve the two shippers on the Line have been completed and that UP and BNSF entered into a Haulage and Switching Agreement on May 1, 2012, for operations between Colton and Riverside. UP states that the agreement provides for "temporary" trackage rights that UP may file with the Board in the event that BNSF is no longer able to perform haulage

³ The Section 106 condition requires UP to (a) retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-way that are eligible for listing or are listed in the National Register of Historic Places (National Register) until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f, has been completed, (b) report back to OEA regarding any consultations with the California Office of Historic Preservation (SHPO) and the public, and (c) refrain from filing its consummation notice or initiating any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition

operations. According to UP, the first railcars for Sigma Stretch and Lehigh Cement were moved by BNSF under the Haulage and Switching Agreement on November 16, 2012. On the Section 106 issue, UP attaches to its January 4 filing documentation from the SHPO that, according to UP, shows that the I-215 bridge is not eligible for listing on the National Register.⁴

On January 23, 2013, RCTC filed a letter supporting UP's request. RCTC notes that a contract was recently awarded in the project to widen I-215 and that construction is scheduled to begin in February. RCTC asks that UP be permitted to begin salvaging the I-215 bridge by February 1 to allow the I-215 widening project to proceed on schedule. The San Bernardino Associated Governments filed a support letter on January 30, 2013.

In a Supplemental Final Environmental Assessment (EA) dated January 25, 2013, the Board's Office of Environmental Analysis (OEA) notes that, to support its request for modification of the Section 106 condition, UP submitted a letter from the SHPO dated September 27, 2010, that concurs with a finding by the California Department of Transportation that the I-215 bridge is not eligible for listing on the National Register. OEA states that the I-215 bridge was identified in the September 27, 2010 letter as part of a larger list of properties determined not eligible for listing on the National Register. OEA also states that, in a letter dated January 15, 2013, the SHPO reaffirms its concurrence with the finding regarding the I-215 bridge. In the Supplemental Final EA, OEA therefore recommends that the Section 106 condition be modified to allow for salvage of the I-215 bridge. Based on OEA's recommendation, the proceeding will be reopened and the previously imposed Section 106 historic preservation condition will be modified to exclude, and therefore permit salvage of, the I-215 bridge.

Although the service plan described by UP in its January 2013 filings does not match precisely in all respects the plan UP originally proposed, the agreement that UP describes substantially conforms with the plan as originally described, and UP has certified that the required connections required to facilitate BNSF haulage to the shippers on the Remaining Segment have been made and that the haulage has, in fact, begun. The shippers on the Remaining Segment were copied on UP's January 21, 2013 letter to the Board and have not disputed UP's assertions or raised any objections or concerns about their present service. Following consummation of UP's abandonment, the Remaining Segment will remain a part of the national rail network via the San Jacinto line, over which BNSF operates, and UP will retain a common carrier obligation to provide service over this segment in the absence of BNSF haulage. Moreover, aside from UP's agreed-upon trackage rights over the San Jacinto line, should BNSF haulage cease, BNSF would have the statutory obligation to interchange with UP in any event so that UP may carry out its common carrier obligation to continue service on the Remaining Segment.⁵ For these reasons, we will lift the alternative service condition.⁶

⁴ Properties that are found not eligible for the National Register do not require further historic review.

⁵ See 49 U.S.C. § 10742; see also, e.g., Ohio Valley R.R.—Petition to Restore Switch Connection & Other Relief, FD 34608 (STB served Feb. 23, 2005) (finding that the removal of a
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This action will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the Section 106 historic preservation condition imposed in the June 21, 2011 decision is modified to exclude the bridge on the Line that crosses Interstate 215 at milepost 541.5. The Section 106 historic preservation condition remains in effect in all other respects.
3. The condition in ordering paragraph 5 of the June 21, 2011 decision prohibiting consummation of abandonment until the elements of UP's alternative service plan have been undertaken and its certification of completion have been reported to the Board is removed.
4. UP is directed to serve a copy of this decision on Sigma Stretch and Lehigh Cement so that it is received within 5 days of the service date of this decision and certify contemporaneously to the Board that it has done so.
5. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

(. . . continued)

switch constituting the only connection between a common carrier and the rest of the national rail system violates the duty to interchange under 49 U.S.C. § 10742).

⁶ It should be noted, however, that the Section 106 condition, which remains in effect with respect to the entirety of the Line except the I-215 bridge, remains a barrier to consummation of abandonment of the Line except for that bridge.